

REMARKS

The Applicant's counsel wishes to thank the Examiner for the time spent reviewing the application and preparing the Second Office Action. In the Second Office Action, claims 1-4 and 7-11 were allowed and claims 12-20 were rejected. In light of the foregoing remarks, claims 1-4 and 7-20 are pending. Reconsideration of the above-identified claims is now respectfully requested.

Rejections Under 35 U.S.C. § 103

In the Second Office Action, claims 12-18 were rejected under 35 U.S.C. § 103 in light of U.S. Patent No. 3,968,620 to Keltner (the "Keltner patent").

The Keltner patent relates to a method of compressing a foam article for use as a "delightful and unusual gift" that pops out of a box and is "very surprising and pleasing to one who unsuspectingly opens the box" (see col. 2, ll. 41-44). The article, such as a pillow, is compressed by placing it in a flexible plastic bag and thereafter removing excess air therefrom. Once sufficiently compressed, the article and associated bag are secured to prevent the article from inadvertently regaining its original size and shape (see col. 1, l. 55-col. 4, l. 37). The bag may be secured by either: (i) sealing the article and bag in a box (col. 2, ll. 29-31); (ii) placing the article and bag in a closed container, such as a canister (col. 2, ll. 59-61); or (iii) in the case of using a decorative plastic bag as the complete packaging, a tie around the opening of the bag will secure the bag (col. 2, ll. 57-59).

In the Second Office Action, the Examiner states that "Keltner teaches that the article (1) in the vacuum chamber (3) can be place [sic] in a container which is air permeable after compression (col. 2, lines 61-63)." However, lines 61-63 of Column 2 state that "[a]fter

compression, it is not necessary for either the bag or the container to be air-tight" (col. 1, ll. 61-63). A container that is not air-tight is not synonymous with a container comprising an air permeable material or a fabric material.

Furthermore, the Keltner patent neither teaches nor suggests a storage container comprising an air permeable material, as required by Claim 12, or a storage container comprising a fabric material, as required by Claim 17. Applicant submits that the Keltner patent neither teaches nor suggests either concept. The Keltner patent teaches that "it is not necessary for either the bag or the container to be air-tight" (col. 1, ll. 61-63). However, this teaching does not suggest that the storage container should comprise an air permeable material or a fabric material. It simply suggests that it is not necessary for either the bag or container to be air-tight. The Keltner patent is not clear as to the type of material the container can be made of. As such, there is no teaching or suggestion in the Keltner patent for a storage container comprising an air permeable material, as articulated in Claim 12, nor a storage container comprising a fabric material, as articulated in Claim 17.

Additionally, in claim 12 the Applicant claims placing the furniture assembly in a storage container with the opening of the vacuum chamber unsealed, wherein the storage container comprises an air permeable material. Thus, the Applicant claims a method involving both an air permeable material and an unsealed chamber. The Keltner patent, on the other hand, only discloses that it is not necessary for the bag or container to be air-tight. There is therefore no suggestion or teaching by Keltner to employ both an unsealed chamber in conjunction with an air permeable container. Nor is there a suggestion or teaching by Keltner to employ a fabric container, as recited in claim 17.

According to section 2143.01 of the Manual of Patent Examining Procedure, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” MPEP § 2143.01 (emphasis in original). There is nothing in the Keltner reference that suggests the desirability of using both an unsealed chamber and a storage container comprising an air permeable material. Furthermore, it is not permissible to use hindsight when making a determination of patentability. “The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant’s disclosure.” MPEP § 2143.

With regard to claim 17, the office action does not address the “fabric” material recited with respect to the storage container of that claim. Instead, the rejection relates to air permeability, not the use of fabric. Nevertheless, the Keltner patent does not teach or suggest the use of a fabric storage container as claimed by Applicant.

As recited in the applicant’s patent application “because bag 44 is air permeable and because opening 28 of vacuum chamber 26 is still left partially open, chair 14 may continue to expand.” Published application paragraph 0060. The unsealed vacuum chamber allows a unique expansion potential rather than sealing the chair or other article within the vacuum chamber, and the air permeable material allows the expansion of the combined vacuum chamber and chair. As further stated in the applicant’s disclosure, “leaving vacuum chamber 26 open to the atmosphere during storing and/or transportation significantly increases the eventual rate of expansion of chair 14, allowing the user to enjoy the uses of chair 14 more quickly after removing the storage container and vacuum chamber.” Published application paragraph 0071.

The applicant’s invention relates to a unique and novel method of packing furniture that is unparalleled in the prior art. The use of an unsealed chamber and an air permeable material,

along with the additional elements claimed, renders the furniture significantly more useful than objects packaged by other methods. The applicant's methods are nonobvious, unique and novel and are entitled to patent protection.

Conclusion

In conclusion, it is submitted that pending claims 1-4 and 7-20 are in condition for allowance. As such, reconsideration and allowance of the above-identified claims is now respectfully requested.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 3rd day of May, 2005.

Respectfully submitted,


Michael M. Ballard
Registration No. 54,978
Attorney for Applicant
Customer No. 022913
Telephone No. (801) 533-9800

DBD:MMB:jbe
MMB0000000112V001